IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRL.A.No. 244 of 1999()

ST.1508/1996 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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PETITIONER/COMPLAINANT:

CHANDRASEKHARAN, KARTHIKA HOUSE,
THEKKENADA BHAGAM, NADUVILE VILLAGE,
VAIKOM, KOTTAYAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

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1. DEVARAJAN, S/O. MADHAVAN, PUTHENPURAYIL VEEDU,
PULINCHUVADU BHAGAM, NADUVILE VILLAGE,
VAIKOM, KOTTAYAM DISTRICT.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1-BY ADV. SRI.GRASHIOUS KURIAKOSE
R2-BY P.P.SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.244 OF 1999-A

Dated this the 27th day of September, 2007.

JUDGMENT

A short question involved in this appeal is whether the appellant/complainant is succeeded in proving that notice contemplated under Section 138 (b) has been sent and received by the respondents/accused or not. It is the case of the appellant/complainant that the respondents/accused had borrowed an amount of Rs.20,000/= and for the discharge of the said amount, Ext.P1 cheque has been issued. But, as the cheque was dishonoured on presentation for encashment, the complaint has been filed before the court. The trial court after considering the evidence of the appellant/complainant, who was examined as PW1, found that the appellant/complainant failed to prove that he had sent statutory notice of dishonouring of the cheque on getting intimation from the Bank and hence, the acquittal has been ordered.

2. This Court heard the learned counsel on either side and perused the records made available. Along with the appeal, the appellant had filed a carbon copy of the reply alleged to have been

sent by the respondents for the notice issued under Section 138 (b) of the Act. Apart from the above, the counsel for the appellant submits that Exts.P3 and P4 would also prove that the appellant/complainant had complied with Section 138 (b) of the Act. However, the trial court found that the appellant/complainant failed to prove that statutory notice has been sent and received by the respondents. As per the judgment reported by this Court in **Bhavani Auto Distributors v. Muraleedharan K.** (2007 (3) ILR 55) and the judgment of the Apex Court reported in **Alavi Haji C.C v. Palapetty Mohammed** (2007(3) ILR 203), it is held that duty caste on a complainant under Section 138 is that he should show that notice has been sent in the correct address and it is the burden of the respondents to show that notice has not been sent in the correct address or served on him. The facts of the case in hand would show that the appellant had sent notice on the basis of the Annexure produced before the court. But the ground taken by the trial court is to the effect that there is no evidence before the court to show that notice has been sent in correct address. However, from the evidence now adduced, this Court is of the view that the trial court has to re-consider the matter afresh on giving further opportunity to the appellant as well as the respondents on their

appearance.

3. Accordingly, the judgment under appeal is set aside and the matter is remanded back to the trial court for a fresh disposal. It is also made clear that the matter being an old one, the trial court shall decide the same as early as possible. It is clarified that if the respondent appears on the date fixed by the court and applies for exemption from further appearance, that application shall also be considered by the court. The parties shall appear before the court below on 17.11.2007.

With the above observations, this appeal stands allowed to the extent indicated above.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.244 OF 1999-A

JUDGMENT

27th September, 2007.